

III. REMARKS

1. Claims 32-36 are new.

2. Claim 1 is not unpatentable over Yamashita under 35 U.S.C. §103(a).

Claim 1 recites a method for expressing an affective state "of the caller" and/or "called party" to the conversation partner "in communication" by telephone. The caller and called partner send each other messages. "During" the communication, the recipient of a message hears a musical composition representing the affective state of the sender of the message. This is not disclosed or suggested by Yamashita.

Yamashita discloses a method for altering the "calling notification" of a radio communication apparatus. The "calling notification" can be any desired music data i.e. a musical composition. The aim of the "calling notification" is totally different than the musical composition of the present application that is heard "during" the communication. In Yamashita the recipient of the call hears the calling notification as a sign of an incoming call and not during the call. When the recipient answers the phone, the "calling notification" ceases immediately. Thus the recipient hears the "calling notification" only before the actual communication begins not "during" as in Applicant's invention. In the present application the recipient hears the musical composition "during" the communication (see claim 1) i.e. behind the voice of the conversation partner, and not as a "calling notification" as that term is used in Yamashita.

For example, in Yamashita the "called station gives calling notification and display the received message." (Abstract). The

inputting of music data after the identification number code and message data occurs during a calling operation. (Col. 5, lines 22-27). The music data is appended to message data from the calling party. Thus selective calling information is received by the selective calling receiver and the ringing sound is generated using that music data. This is not the same as Applicant's invention where the caller and called party are sending each other messages and it is during this communication that the "recipient of a message" (the caller or called party) hears the musical composition representing the affective state of the sender.

Yamashita is limited to performing a ringing operation for "calling notification" using a desired type of music data and does not disclose or suggest playing a musical composition "during" the communication. (Col. 6, lines 11-37, Col. 7, lines 28-34).

Col. 4, lines 29-47 of Yamashita merely describes how music data is inputted after the identification code and message data. This section goes on to talk about methods of transmitting the "calling signal" with the music data attached. This section does not disclose or suggest that the caller and called party send each other messages during the communication as claimed by Applicant.

Col. 5, lines 1-15 only discusses how music data is stored and a "calling" sound is generated using the stored music data to perform the "ringing operation" for "calling notification". This is not the same as the caller and called party sending each other messages and that during the communication, the recipient of a message hears a musical composition representing the affective state of the sender of the message, as is claimed by Applicant.

While col. 3, lines 15-21 teaches that "calling" can be performed using any desired "stored" music data, this is not the same as what is claimed by Applicant. Applicant respectfully traverses the Examiner's taking of Official Notice of equivalence of Yamashita's musical composition representing the affective state as is claimed by Applicant.

In Yamashita the calling notification can be any desired music. In Applicant's invention, claim 1 recites a method in which the affective state of the caller and/or called party is expressed to the conversation partner in a telephone conversation by a musical composition representing the affective state of the sender of the message. The recipient of the message hears the composition in the background of the conversation. The basic idea of the invention is that the musical composition reflects the state of mind (happiness, sadness, etc.) of the sender of a message (page 2, lines 9-12). Thus, the musical compositions are chosen particularly to express a certain state of mind or feeling of the caller/called party and are transmitted "during" the call.

The main purpose of the background sound in the present application is to express the affective state of the caller and/or called party and the musical compositions are chosen accordingly. Yamashita does not give any indication, that "calling notifications" could reflect the state of mind of the conversation partners. This cannot be considered a fact that is common knowledge or well know in the art.

Thus, Applicant does not agree with the Examiner's taking of Official Notice and requests that the Examiner provide documentary evidence in the record to support the Examiner's position. (M.P.E.P. §2144.03) The Examiner must produce authority for the statement that a calling notification is the

equivalent of a musical composition representing an affective state of mind of the sender, as is recited by Applicant in the claim.

Therefore, claim 1 is not disclosed or suggested by Yamashita.

3. Claim 2 is not unpatentable over Yamashita in view of Goldberg. Goldberg does not overcome the deficiencies of Yamashita noted above. Claim 2 should thus be allowable at least in view of its dependency.

4. Claims 3-4, 6-21 and 23 are not unpatentable over Yamashita in view of Cardina et al. ("Cardina") under 35 U.S.C. §103(a).

Cardina does not overcome the deficiencies of Yamashita noted above.

Claim 17 recites a system for expressing "an affective state of a caller and/or called party" to the "conversation partner". For reasons similar to those stated with respect to claim 1, claim 17 should also be allowable, since its features are neither disclosed or suggested by Yamashita or its combination with Cardina.

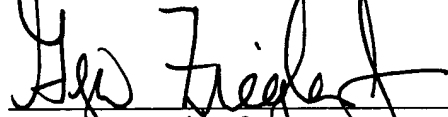
Thus, claims 3-4, 6-16, 18-21 and 23 should be allowable at least in view of their respective dependencies.

5. Claims 5 and 22 are not unpatentable over Yamashita in view of Cardina and further in view of Goldberg. Claim 5 and 22 should be allowable at least in view of their respective dependencies.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



Geza C. Ziegler, Jr.
Reg. No. 44,004

Perman & Green, LLP
425 Post Road
Fairfield, CT 06824
(203) 259-1800 Ext. 134
Customer No.: 2512



10 MAY 2005

Date

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date indicated below as first class mail in an envelope addressed to MAIL STOP AMENDMENT, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: 10 May 2005

Signature: 
Person Making Deposit